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Revisions to Petition Provisions of Title V Permitting Procedures: William K. Montgomery (Arkansas Department of Energy and Environment - Division of Environmental Quality, Associate Administrator for Air) Webinar Presentation

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William ("Will") K. Montgomery, Arkansas Department of Energy and Environment - Division of Environmental Quality ("DEQ"), Associate Director, undertook a webinar presentation as part of the Mitchell Williams Environmental Insights Series titled:

Revisions to the Petition Provisions of Title V Permitting Procedures ("Presentation")

The other presenters included Stuart Spencer of Williams Mitchell Law Firm and Ben Holden, P.E., Air Services Manager for GBMc & Associates.

The United States Environmental Protection Agency ("EPA") issued a final rule earlier in the year that revised its regulations to streamline and clarify processes related to submission and review of Title V petitions.

The 1990 amendments to the Clean Air Act provide a process by which the EPA Administrator can object to a Title V permit issued by a delegated state.

Title V requires certain stationary sources of air pollution to obtain Title V operating permits. The Clean Air Act requires that states administer Title V through adopted implementation plans. These plans are submitted to and approved by EPA. The intent of a Title V permit is to organize in a single document all the air requirements which apply to the permit holder. Components of a Title V permit include:

- Listing of permitting activities
- Description of emission units and pollution control devices
- Listing of applicable emission limits and standards
- Description of methods of monitoring
- Description of recordkeeping
- Identification of methods to be used for reporting and certifying compliance

States are required by Title V to submit each proposed operating permit to EPA for review. Section 505(v)(1) of the Clean Air Act requires that EPA object to the issuance of a proposed Title V permit in writing within 45 days of the receipt of the proposed permit (and all necessary supporting information) if the federal agency determines that it is not in compliance with the applicable requirements of the Clean Air Act. If EPA does not object to a permit, Section 505(v)(2) provides that any person may petition the EPA Administrator, within 60 days of the expiration of the 45-day review period, to object to the permit.

Will Montgomery's *Presentation* focused on three key topics:

- Concurrent v. Sequential Review
- Comments and Concerns
- Final Rule Changes Affecting DEQ

The effective date of the rulemaking is noted to have been April 6, 2020.

The *Presentation* notes:

Following more than 20 years of experience with title V petitions, and taking into account feedback from various stakeholders, the agency proposed changes to 40 CFR part 70 that were intended to provide clarity and transparency to the petition process and to improve the efficiency of that process.

Concurrent or Parallel Review is shown as:

1. Draft Permit/"Proposed Permit" sent to EPA
2. EPA (45 days) and Public (30 days) Comment Periods run concurrently
3. No "significant comments" received
4. DEQ issues Final Permit

The *Presentation* outlines the Sequential Review (Significant Comments) process as:

1. Draft Permit/"Proposed Permit" sent to EPA
2. Public comment period (30 days)
3. DEQ receives "significant comments"
4. DEQ sends "proposed permit" again for 45-day comment period
5. DEQ issues Final Permit

Will notes in terms of comments and concerns:

- Increase in permitting time
- Running EPA and Public Comment periods consecutively for significant comments adds time.
- Delays caused by disagreements over issue resolution
- EPA may disagree with the method of resolving a public comment, but DEQ will not know until after it has issued a "Proposed Permit" and waited for the conclusion of the 45-day EPA comment period.
- Support electronic submittal system
- Opposed public notice for transmittal (not finalized)

Noted rule changes affecting permitting authorities include:

- Must respond to "significant comments" and provide EPA with the "proposed permit," written responses to comments, and the statement of basis
- Finalized mandatory petition content

Positive aspects of the current provisions are stated to include:

- Acknowledges the legality of concurrent review

- Provides for sequential review only when “significant comments” are received (rather than any comments)
- Permitting authority decides when a “significant comment” is received
- States EPA intent to post when the proposed permit is received

In terms of “significant comments,” the *Presentation* notes that:

- The interpretation of the phrase “significant comments” is informed by the D.C. Circuit Court of Appeals (framing of the relevant inquiry and its review of regulatory actions by federal agencies).
- Significant comments in the referenced context are stated to include:
- . . . but are not limited to, comments that concern whether the Title V permit includes terms and conditions addressing federal applicable requirements and requirements under part 70, including adequate monitoring and related recordkeeping and reporting requirements.

DEQ’s response to the Title V changes are stated to include:

- Case-by-case determination when comments are received
- Open dialogue with the permitting facility about process, requirements, and timeframes
- DEQ Response to Changes
- Minimize risk through robust permit writing that protects the community as well as the investments in the community

A copy of the *Presentation* slides can be downloaded [here](#).